

# HOUSE BILL No. 1368

## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 10-11-9; IC 34-30-2-35.6; IC 35-38-2-2.3; IC 35-50-5-3.

**Synopsis:** Crime stoppers organizations. Establishes the crime stoppers advisory council (council) within the state police department and provides for the appointment of members. Requires the council to encourage and assist in the creation of crime stoppers organizations and facilitate the detection of crime. Makes reports relating to criminal acts made to a crime stoppers organization or the council confidential. Makes unlawfully disclosing a crime stoppers report a Class A misdemeanor, and enhances the penalty to a Class D felony if the disclosure is made for monetary gain. Permits a court to order a person convicted of a crime to repay all or part of any reward money paid by a crime stoppers organization or to order a person on probation to make a payment to a crime stoppers organization. Authorizes the council to certify which crime stoppers organizations are eligible for payments or repayments, and specifies that crime stoppers organizations that receive payments or repayments are subject to audit. Requires the council to establish a toll free telephone service for the reporting of criminal acts and to make the toll free service available in parts of Indiana not served by a crime stopper organization. Provides immunity from civil liability for persons who make, receive, or transmit certain information relating to criminal activity. Makes other changes and conforming amendments.

**Effective:** July 1, 2009.

**Hinkle**

January 13, 2009, read first time and referred to Committee on Rules and Legislative Procedures.

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First Regular Session 116th General Assembly (2009)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2008 Regular Session of the General Assembly.

## HOUSE BILL No. 1368

A BILL FOR AN ACT to amend the Indiana Code concerning public safety.

*Be it enacted by the General Assembly of the State of Indiana:*

SECTION 1. IC 10-11-9 IS ADDED TO THE INDIANA CODE AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]:

### **Chapter 9. Crime Stoppers Organizations**

#### **Sec. 1. As used in this chapter:**

(1) "Council" means the crime stoppers advisory council established by section 2 of this chapter.

(2) "Crime stoppers organization" means:

(A) a private, nonprofit organization that:

(i) is operated on a local or statewide level;

(ii) accepts and expends donations for rewards to persons who report to the organization information about criminal activity; and

(iii) forwards the information to the appropriate law enforcement agency; or

(B) a public organization that:

(i) is operated on a local or statewide level;

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- (ii) pays rewards to persons who report to the organization information about criminal activity; and
- (iii) forwards the information to the appropriate law enforcement agency.

**Sec. 2. (a) The crime stoppers advisory council is established within the department.**

**(b) The council consists of five (5) members appointed by the governor, not more than three (3) of whom are from the same political party. In addition, at least three (3) of the members must be persons who have participated in a crime stoppers organization in any of the following capacities:**

- (1) As a law enforcement coordinator.**
- (2) As a member of the board of directors.**
- (3) As a media representative.**
- (4) As an administrative officer.**

**(c) The term of office of a member is four (4) years.**

**(d) At its first meeting after the beginning of each state fiscal year, the council shall elect from among its members a chairperson and any other officers that the council considers necessary.**

**Sec. 3. (a) Each member of the council who is not a state employee is entitled to the minimum salary per diem provided by IC 4-10-11-2.1(b). The member is also entitled to reimbursement for traveling expenses and other expenses actually incurred in connection with the member's duties, as provided in the state travel policies and procedures established by the Indiana department of administration and approved by the budget agency.**

**(b) Each member of the council who is a state employee but who is not a member of the general assembly is entitled to reimbursement for traveling expenses and other expenses actually incurred in connection with the member's duties, as provided in the state travel policies and procedures established by the Indiana department of administration and approved by the budget agency.**

**Sec. 4. The council and the superintendent shall designate a person to serve as director. The director must be approved by the governor. The council shall define the director's authority and responsibilities.**

**Sec. 5. The council shall do the following:**

- (1) Encourage, advise, and assist in the creation of crime stoppers organizations.**
- (2) Foster the detection of crime and encourage persons to report information about criminal acts.**
- (3) Encourage news and other media to broadcast**

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reenactments and to inform the public of the functions of crime stoppers organizations' operations and programs.

(4) Promote the process of crime stoppers organizations to forward information about criminal acts to the appropriate law enforcement agencies.

(5) Help law enforcement agencies detect and combat crime by increasing the flow of information to and among law enforcement agencies.

(6) Create specialized programs targeted at detecting specific crimes or types of crimes, including at least one (1) program that:

(A) encourages individuals to report sex offenders who have failed to register; and

(B) financially rewards each individual who makes a report described in clause (A) that leads or substantially contributes to the arrest or apprehension of a sex offender who has failed to register as a sex offender.

(7) Encourage, advise, and assist crime stoppers organizations in implementing any programs created under subdivision (6), including a program specifically described by subdivision (6).

Sec. 6. The council may adopt rules under IC 4-22-2 to implement this chapter. Rules adopted under this section may not conflict with rules adopted by the department.

Sec. 7. Council records relating to a report of a criminal act are confidential.

Sec. 8. (a) Except as provided in subsection (b), (c), or (d), evidence of a communication between a person submitting a report of a criminal act to:

(1) the council; or

(2) a crime stoppers organization;

and the person who accepted the report on behalf of the council or organization is not admissible in a court or an administrative proceeding.

(b) Records of the council or a crime stoppers organization concerning a report of criminal activity may not be compelled to be produced before a court or other tribunal except on a motion:

(1) filed in a criminal court by a defendant who alleges that the records or report contains evidence that is exculpatory to the defendant in the trial of that offense; or

(2) filed in a civil case by a plaintiff who alleges that denial of access to the records concerning the report of criminal activity abrogates any part of a cognizable cause of action, if

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the plaintiff alleging abrogation:

(A) was charged with or convicted of a criminal offense based at least partially on the report and the charges were dismissed, the plaintiff was acquitted, or the conviction was overturned, as applicable; and

(B) establishes in the motion a prima facie case that the plaintiff's abrogated claim is based on injuries from the criminal charge or conviction caused by the wrongful acts of another performed in connection with the report.

(c) On motion of a person described in subsection (b), the court may issue an order to obtain the records or report. The court shall conduct an in camera inspection of the materials to determine whether the materials contain:

(1) evidence that is exculpatory to the defendant; or

(2) information necessary to a plaintiff as described in subsection (b)(2).

(d) If the court determines that the materials contain evidence that is exculpatory to the defendant or information necessary to a plaintiff as described in subsection (b)(2), the court shall present the evidence to the plaintiff or defendant in a form that does not disclose the identity of the person who was the source of the evidence, unless the state or federal constitution requires the disclosure of that person's identity. The court shall certify that the materials disclosed represent the evidence the person is entitled to receive under this section.

(e) The court shall return to the council or crime stoppers organization the materials that are produced under this section but not disclosed. The council or crime stoppers organization shall store the materials at least until the first anniversary of the following date:

(1) the date of expiration of the time for all direct appeals in a criminal case; or

(2) the date a plaintiff's right to appeal in a civil case is exhausted.

**Sec. 9. (a)** As used in this section, "receiving employee" means a member or employee of the council or a person who accepts a report of criminal activity on behalf of a crime stoppers organization.

**(b)** A receiving employee who knowingly or intentionally discloses to a person who is not:

(1) employed by a law enforcement agency; or

(2) entitled to see the contents of a report of a criminal act

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under this chapter;  
 the contents of a report of a criminal act or the identity of the person who made the report without the consent of the person who made the report commits unlawful disclosure of a crime stoppers report, a Class A misdemeanor. However, the offense is a Class D felony if the offense is committed with intent to obtain monetary gain or other benefit.

Sec. 10. (a) The council shall, on application by a crime stoppers organization, determine whether the organization is qualified to receive repayments of rewards under IC 35-50-5-3, or payments from a defendant on probation under IC 35-38-2-2.3. The council shall certify a crime stoppers organization to receive those repayments or payments if, considering the organization, continuity, leadership, community support, and general conduct of the crime stoppers organization, the council determines that the repayments or payments will be spent to further the crime prevention purposes of the organization.

(b) Each crime stoppers organization certified by the council to receive repayments of rewards under IC 35-50-5-3, or payments from a defendant on probation under IC 35-38-2-2.3, is subject to a review or audit, including financial and programmatic reviews or audits, of finances or programs at the direction of the superintendent.

(c) The superintendent shall draft rules for adoption by the council relating to a review or audit requested under subsection (b).

(d) A certification issued by the council is valid for two (2) years. During this two (2) year period, the council shall decertify a crime stoppers organization if it determines that the organization no longer meets the certification requirements.

(e) The council may approve a crime stoppers organization for purposes of subsection (a) even if a judge has not requested a determination for that organization and shall maintain a current list of organizations approved for that purpose.

Sec. 11. (a) Except as provided by subsection (d), a crime stoppers organization certified by the council to receive money in the form of repayments of rewards under IC 35-50-5-3, or payments from a defendant on probation under IC 35-38-2-2.3:

(1) may use not more than twenty percent (20%) of the money annually received to pay costs incurred in administering the organization; and

(2) shall use the remainder of the money, including any

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1 interest earned on the money, only to reward persons who  
 2 report information concerning criminal activity. Not later  
 3 than January 31 of each year, a crime stoppers organization  
 4 that receives or expends money under this section shall file a  
 5 detailed report with the council.

6 (b) A crime stoppers organization shall establish a separate  
 7 reward account for money received under this section.

8 (c) Not later than the sixty (60) days after the date of dissolution  
 9 or decertification of a crime stoppers organization, a dissolved or  
 10 decertified organization shall forward all unexpended money  
 11 received under this section to the auditor of state. The auditor of  
 12 state shall deposit the money from the account in the state general  
 13 fund.

14 (d) If the amount of funds received by a crime stoppers  
 15 organization under this section exceeds three (3) times the amount  
 16 of funds that the organization uses to pay rewards during a fiscal  
 17 year based on the average amount of funds used to pay rewards  
 18 during each of the preceding three (3) fiscal years, the organization  
 19 may deposit the excess amount of funds in a separate account to be  
 20 used by the organization for law enforcement purposes relating to  
 21 crime stoppers or juvenile justice, including intervention,  
 22 apprehension, and adjudication. An organization that deposits  
 23 excess funds in an account as provided by this subsection may use  
 24 any interest earned on the funds to pay costs incurred in  
 25 administering the organization.

26 Sec. 12. The council shall establish and operate a toll free  
 27 telephone service and make the service accessible to persons  
 28 residing in areas of Indiana not served by a crime stoppers  
 29 organization for reporting to the council information about  
 30 criminal acts. The toll free service must be available between 5  
 31 p.m. and 8 a.m. Monday through Thursday and from 5 p.m. Friday  
 32 until 8 a.m. Monday. The council shall forward the information  
 33 received to appropriate law enforcement agencies or crime  
 34 stoppers organizations.

35 Sec. 13. (a) A person who communicates to the council or a  
 36 crime stoppers organization a report of criminal activity that leads  
 37 to the arrest of, the filing of charges against, or the conviction of a  
 38 person for a criminal offense is immune from civil liability for  
 39 damages resulting from the communication unless the  
 40 communication was made with gross negligence or constitutes  
 41 willful or wanton misconduct.

42 (b) A person who in the course and scope of the person's duties

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or functions receives, forwards, or acts on a report of criminal activity communicated to the council or a crime stoppers organization is immune from civil liability for damages resulting from an act or omission in the performance of the person's duties or functions unless the act or omission constitutes gross negligence or willful or wanton misconduct.

SECTION 2. IC 34-30-2-35.6 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 35.6. IC 10-11-9-13 (Concerning persons who make or receive crime stoppers reports).**

SECTION 3. IC 35-38-2-2.3, AS AMENDED BY P.L.3-2008, SECTION 249, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 2.3. (a) As a condition of probation, the court may require a person to do a combination of the following:

- (1) Work faithfully at suitable employment or faithfully pursue a course of study or career and technical education that will equip the person for suitable employment.
- (2) Undergo available medical or psychiatric treatment and remain in a specified institution if required for that purpose.
- (3) Attend or reside in a facility established for the instruction, recreation, or residence of persons on probation.
- (4) Support the person's dependents and meet other family responsibilities.
- (5) Make restitution or reparation to the victim of the crime for damage or injury that was sustained by the victim. When restitution or reparation is a condition of probation, the court shall fix the amount, which may not exceed an amount the person can or will be able to pay, and shall fix the manner of performance.
- (6) Execute a repayment agreement with the appropriate governmental entity to repay the full amount of public relief or assistance wrongfully received, and make repayments according to a repayment schedule set out in the agreement.
- (7) Pay a fine authorized by IC 35-50.
- (8) Refrain from possessing a firearm or other deadly weapon unless granted written permission by the court or the person's probation officer.
- (9) Report to a probation officer at reasonable times as directed by the court or the probation officer.
- (10) Permit the person's probation officer to visit the person at reasonable times at the person's home or elsewhere.
- (11) Remain within the jurisdiction of the court, unless granted permission to leave by the court or by the person's probation

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officer.

(12) Answer all reasonable inquiries by the court or the person's probation officer and promptly notify the court or probation officer of any change in address or employment.

(13) Perform uncompensated work that benefits the community.

(14) Satisfy other conditions reasonably related to the person's rehabilitation.

(15) Undergo home detention under IC 35-38-2.5.

(16) Undergo a laboratory test or series of tests approved by the state department of health to detect and confirm the presence of the human immunodeficiency virus (HIV) antigen or antibodies to the human immunodeficiency virus (HIV), if:

(A) the person had been convicted of an offense relating to a criminal sexual act and the offense created an epidemiologically demonstrated risk of transmission of the human immunodeficiency virus (HIV); or

(B) the person had been convicted of an offense relating to a controlled substance and the offense involved:

(i) the delivery by any person to another person; or

(ii) the use by any person on another person;

of a contaminated sharp (as defined in IC 16-41-16-2) or other paraphernalia that creates an epidemiologically demonstrated risk of transmission of HIV by involving percutaneous contact.

(17) Refrain from any direct or indirect contact with an individual.

(18) Execute a repayment agreement with the appropriate governmental entity or with a person for reasonable costs incurred because of the taking, detention, or return of a missing child (as defined in IC 10-13-5-4).

(19) Periodically undergo a laboratory chemical test (as defined in IC 14-15-8-1) or series of chemical tests as specified by the court to detect and confirm the presence of a controlled substance (as defined in IC 35-48-1-9). The person on probation is responsible for any charges resulting from a test and shall have the results of any test under this subdivision reported to the person's probation officer by the laboratory.

(20) If the person was confined in a penal facility, execute a reimbursement plan as directed by the court and make repayments under the plan to the authority that operates the penal facility for all or part of the costs of the person's confinement in the penal facility. The court shall fix an amount that:

(A) may not exceed an amount the person can or will be able

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to pay;

(B) does not harm the person's ability to reasonably be self supporting or to reasonably support any dependent of the person; and

(C) takes into consideration and gives priority to any other restitution, reparation, repayment, or fine the person is required to pay under this section.

(21) Refrain from owning, harboring, or training an animal.

(22) Participate in a reentry court program.

**(23) Repay all or part of a reward paid by an authorized crime stoppers organization (as defined in IC 35-50-5-3).**

(b) When a person is placed on probation, the person shall be given a written statement specifying:

(1) the conditions of probation; and

(2) that if the person violates a condition of probation during the probationary period, a petition to revoke probation may be filed before the earlier of the following:

(A) One (1) year after the termination of probation.

(B) Forty-five (45) days after the state receives notice of the violation.

(c) As a condition of probation, the court may require that the person serve a term of imprisonment in an appropriate facility at the time or intervals (consecutive or intermittent) within the period of probation the court determines.

(d) Intermittent service may be required only for a term of not more than sixty (60) days and must be served in the county or local penal facility. The intermittent term is computed on the basis of the actual days spent in confinement and shall be completed within one (1) year. A person does not earn credit time while serving an intermittent term of imprisonment under this subsection. When the court orders intermittent service, the court shall state:

(1) the term of imprisonment;

(2) the days or parts of days during which a person is to be confined; and

(3) the conditions.

(e) Supervision of a person may be transferred from the court that placed the person on probation to a court of another jurisdiction, with the concurrence of both courts. Retransfers of supervision may occur in the same manner. This subsection does not apply to transfers made under IC 11-13-4 or IC 11-13-5.

(f) When a court imposes a condition of probation described in subsection (a)(17):

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- (1) the clerk of the court shall comply with IC 5-2-9; and
- (2) the prosecuting attorney shall file a confidential form prescribed or approved by the division of state court administration with the clerk.

(g) As a condition of probation, a court shall require a person:

- (1) convicted of an offense described in IC 10-13-6-10;
- (2) who has not previously provided a DNA sample in accordance with IC 10-13-6; and
- (3) whose sentence does not involve a commitment to the department of correction;

to provide a DNA sample as a condition of probation.

SECTION 4. IC 35-50-5-3, AS AMENDED BY P.L.173-2006, SECTION 54, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 3. (a) Except as provided in subsection (i) or (j), in addition to any sentence imposed under this article for a felony or misdemeanor, the court may, as a condition of probation or without placing the person on probation, order the person to make restitution to the victim of the crime, the victim's estate, or the family of a victim who is deceased. The court shall base its restitution order upon a consideration of:

- (1) property damages of the victim incurred as a result of the crime, based on the actual cost of repair (or replacement if repair is inappropriate);
- (2) medical and hospital costs incurred by the victim (before the date of sentencing) as a result of the crime;
- (3) the cost of medical laboratory tests to determine if the crime has caused the victim to contract a disease or other medical condition;
- (4) earnings lost by the victim (before the date of sentencing) as a result of the crime including earnings lost while the victim was hospitalized or participating in the investigation or trial of the crime; and
- (5) funeral, burial, or cremation costs incurred by the family or estate of a homicide victim as a result of the crime.

(b) A restitution order under subsection (a), ~~or~~ (i), ~~or~~ (j), **or** (k) is a judgment lien that:

- (1) attaches to the property of the person subject to the order;
- (2) may be perfected;
- (3) may be enforced to satisfy any payment that is delinquent under the restitution order by the person in whose favor the order is issued or the person's assignee; and
- (4) expires;

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in the same manner as a judgment lien created in a civil proceeding.

(c) When a restitution order is issued under subsection (a), the issuing court may order the person to pay the restitution, or part of the restitution, directly to:

(1) the victim services division of the Indiana criminal justice institute in an amount not exceeding:

(A) the amount of the award, if any, paid to the victim under IC 5-2-6.1; and

(B) the cost of the reimbursements, if any, for emergency services provided to the victim under IC 16-10-1.5 (before its repeal) or IC 16-21-8; or

(2) a probation department that shall forward restitution or part of restitution to:

(A) a victim of a crime;

(B) a victim's estate; or

(C) the family of a victim who is deceased.

The victim services division of the Indiana criminal justice institute shall deposit the restitution it receives under this subsection in the violent crime victims compensation fund established by IC 5-2-6.1-40.

(d) When a restitution order is issued under subsection (a), (i), **or** (j), **or** (k), the issuing court shall send a certified copy of the order to the clerk of the circuit court in the county where the felony or misdemeanor charge was filed. The restitution order must include the following information:

(1) The name and address of the person that is to receive the restitution.

(2) The amount of restitution the person is to receive.

Upon receiving the order, the clerk shall enter and index the order in the circuit court judgment docket in the manner prescribed by IC 33-32-3-2. The clerk shall also notify the department of insurance of an order of restitution under subsection (i).

(e) An order of restitution under subsection (a), (i), **or** (j), **or** (k) does not bar a civil action for:

(1) damages that the court did not require the person to pay to the victim under the restitution order but arise from an injury or property damage that is the basis of restitution ordered by the court; and

(2) other damages suffered by the victim.

(f) Regardless of whether restitution is required under subsection (a) **or** (k), as a condition of probation or other sentence, the restitution order is not discharged by the completion of any probationary period or other sentence imposed for a felony or misdemeanor.

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(g) A restitution order under subsection (a), (i), ~~or~~ (j), **or (k)** is not discharged by the liquidation of a person's estate by a receiver under IC 32-30-5 (or IC 34-48-1, IC 34-48-4, IC 34-48-5, IC 34-48-6, IC 34-1-12, or IC 34-2-7 before their repeal).

(h) The attorney general may pursue restitution ordered by the court under subsections (a) and (c) on behalf of the victim services division of the Indiana criminal justice institute established under IC 5-2-6-8.

(i) The court may order the person convicted of an offense under IC 35-43-9 to make restitution to the victim of the crime. The court shall base its restitution order upon a consideration of the amount of money that the convicted person converted, misappropriated, or received, or for which the convicted person conspired. The restitution order issued for a violation of IC 35-43-9 must comply with subsections (b), (d), (e), and (g), and is not discharged by the completion of any probationary period or other sentence imposed for a violation of IC 35-43-9.

(j) The court may order the person convicted of an offense under IC 35-43-5-3.5 to make restitution to the victim of the crime, the victim's estate, or the family of a victim who is deceased. The court shall base its restitution order upon a consideration of the amount of fraud or harm caused by the convicted person and any reasonable expenses (including lost wages) incurred by the victim in correcting the victim's credit report and addressing any other issues caused by the commission of the offense under IC 35-43-5-3.5. If, after a person is sentenced for an offense under IC 35-43-5-3.5, a victim, a victim's estate, or the family of a victim discovers or incurs additional expenses that result from the convicted person's commission of the offense under IC 35-43-5-3.5, the court may issue one (1) or more restitution orders to require the convicted person to make restitution, even if the court issued a restitution order at the time of sentencing. For purposes of entering a restitution order after sentencing, a court has continuing jurisdiction over a person convicted of an offense under IC 35-43-5-3.5 for five (5) years after the date of sentencing. Each restitution order issued for a violation of IC 35-43-5-3.5 must comply with subsections (b), (d), (e), and (g), and is not discharged by the completion of any probationary period or other sentence imposed for an offense under IC 35-43-5-3.5.

(k) The court shall order a person convicted of an offense under IC 35-42-3.5 to make restitution to the victim of the crime in an amount equal to the greater of the following:

- (1) The gross income or value to the person of the victim's labor or services.

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1 (2) The value of the victim's labor as guaranteed under the  
 2 minimum wage and overtime provisions of:

3 (A) the federal Fair Labor Standards Act of 1938, as amended  
 4 (29 U.S.C. 201-209); or

5 (B) IC 22-2-2 (Minimum Wage);  
 6 whichever is greater.

7 (l) As used in this subsection, "authorized crime stoppers  
 8 organization" means a crime stoppers organization (as defined in  
 9 IC 10-11-9-1(2)) that is authorized by the crime stoppers advisory  
 10 council to receive repayments of rewards or payments from  
 11 defendants under IC 10-11-9-10. In addition to any sentence  
 12 imposed under this article for a felony or misdemeanor, the court  
 13 may, as a condition of probation or without placing the person on  
 14 probation, order the person to repay all or part of a reward paid  
 15 by an authorized crime stoppers organization. In determining  
 16 whether the defendant must repay the reward or part of the  
 17 reward, the court shall consider:

18 (1) the ability of the defendant to make the payment and the  
 19 financial hardship on the defendant to make the required  
 20 payment; and

21 (2) the importance of the information to the prosecution of the  
 22 defendant as provided by the arresting officer or the  
 23 prosecuting attorney with due regard for the confidentiality  
 24 of the crime stoppers organization records.

25 SECTION 5. [EFFECTIVE JULY 1, 2009] IC 10-11-9-9, as added  
 26 by this act, applies only to crimes committed after June 30, 2009.

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